IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

TUESDAY, THE 27TH FEBRUARY 2007 / 8TH PHALGUNA 1928

A.S.No.492 of 1994

O.S.No.56/1992 OF THE COURT OF THE SUBORDINATE JUDGE OF TIRUR.

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APPELLANT/PLAINTIFF:-

PULIYANKOTT SANKUNNY'S SON ACHUTHAN,
VATTAMKULAM, PONNANI TALUK.

BY ADV. SRI.SEBASTIAN DAVIS
SRI.P.SANTHOSH KUMAR (PANAMPALLI NAGAR)

RESPONDENTS/DEFENDANTS:-

1. NEELAKANDAN NAMBISAN,
   S/O.LATE PARAMESWARAN NAMBISAN,
   VADAKKUMTHARA, PALAKKAD DIST.

2. E.KESAVAN NAMBISAN,
   S/O.LATE PARAMESWARAN NAMBISAN,
   VADAKKUMTHARA, PALAKKAD DIST.

3. E.PARAMESWARAN NAMBISAN,
   S/O.LATE PARAMESWARAN NAMBISAN,
   VADAKKUMTHARA, PALAKKAD DIST.

* 4. PANDALINGAL KOYASSAN, S/O.KUNHI MOIDU,
   VALLAMKULAM, PONNANI TALUK
   (NAME OF 4TH RESPONDENT CORRECTED).

* THE NAME OF RESPONDENT NO.4 IS CORRECTED AS:
PANDALINGAL KOYASSAN'S SON KUNHI MOIDU
INSTEAD OF PANDALINGAL KOYASSAN, S/O.KUNHI MODU -
VIDE ORDER DATED 4.10.2004 ON I.A.NO.3264/2004.

THIS APPEAL SUIT HAVING BEEN FINALLY HEARD ON 27/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:-

K.Padmanabhan Nair,J.

A.S.No.492 of 1994

Dated, this the 27th day of February, 2007

JUDGMENT

The plaintiff in O.S.No.56 of 1992 on the file of Sub Court, Tirur is the appellant in this appeal. The appeal is filed challenging a decree passed by the Court below dismissing a suit for specific performance. The suit property is an aided school by name C.P.N. U.P.School and 82 cents of property wherein the buildings are situate. According to the appellant-plaintiff, Parameswaran Nambisan, the predecessor in interest of defendants 1 to 3, entered into an agreement for specific performance agreeing to sell the property and school in favour of the plaintiff and 4th defendant for a consideration of Rupees One Lakh. It was alleged that it was agreed that the vendor will get necessary approval from the competent authority for transfer of management and then execute the sale deed. Plaintiff and 4th defendant were put in possession of the suit property and they are in joint possession of the same. The 1st defendant is the Manager of the school. The plaintiff has spent amounts for repair

of the school. Defendants 1 to 3 in collusion with the 4th defendant are attempting to transfer the school in favour of somebody else. Hence the suit for specific performance.

2. Defendants 1 to 3 filed a written statement denying the execution of the agreement. It was contended that Parameswaran Nambisan had not entered into any agreement for sale of the suit property and received any advance. It is contended that school was managed by Parameswaran Nambisan till his death and after his death, the 1st defendant was managing the school. The possession asserted by the plaintiff was also denied. The Court below raised the following issues:

"(1) Whether the suit is maintainable?

(2) Whether the agreement dated 5.9.84 is genuine and valid.

(3) Whether the plaintiff is entitled to get specific performance?

(4) Order as to costs and reliefs?"

The Court below considered Issue No.1 as the preliminary issue and dismissed the same holding that since the plaintiff failed to

produce the necessary permission from the District Educational Officer or any officer authorised by the Government on this behalf, the suit was not maintainable. The Court below has not considered the other issues.

3. The learned counsel appearing for the appellant-plaintiff has strenuously argued before me that the dismissal was premature. It is contended that in view of the contention raised by the contesting respondents the main issue to be decided was whether the agreement set up by the appellant was genuine or not. It is contended that the previous sanction of the competent authority is not a condition precedent for filing a suit and the plaintiff is free to produce documents evidencing such permission at the time of trial.

4. In view of the provisions contained in Section 6 of the Kerala Education Act, it is not possible to transfer a fractional share of a school and building to the appellant. It is contended by the counsel for the appellant that the agreement was for transfer of the whole building and school in favour of two persons and if it is found that the agreement is genuine, there was no need to produce any sanction. It is argued that at best the appellant may

be compelled to file a suit for partition, for which no previous sanction is necessary. That contention does not appear to be correct. Provisions contained in Section 6 of the Kerala Education Act applies for sale, mortgage, pledge, charge or transfer of possession in respect of any property of an aided school. The Court below has to consider whether the agreement set up by the appellant is correct or not. The Court below has also to consider whether the plaintiff can be given time to produce the sanction contemplated under Section 6 of the Kerala Education Act. If the plaintiff fail to produce the sanction required even at the time of trial, the Court can dispose of the case in accordance with law.

In the result, the appeal is allowed. The decree and judgment passed by the Court below in O.S.No.56 of 1992 are hereby set aside. The suit is remanded to the Court below for fresh disposal. The parties shall appear before the Court below on 4th April, 2007. C.M.P.No.2992 of 1994 shall stand dismissed.

K.Padmanabhan Nair
Judge

vku/-